



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

November 3, 2021

Mr. Mark Kratovil
Assistant Criminal District Attorney
Tarrant County
401 West Belknap, 9th Floor
Fort Worth, Texas 76196

OR2021-30797

Dear Mr. Kratovil:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 910945.

The Tarrant County Medical Examiner's Office (the "medical examiner's office") received a request for medical records pertaining to a named individual. You raise section 552.101 of the Government Code for the submitted information. We have considered your argument and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by statute, such as the Medical Practices Act (the "MPA"), subtitle B of title 3 of the Occupations Code, which governs release of medical records. Section 159.002 of the MPA provides, in relevant part, as follows:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Occ. Code § 159.002(a)-(c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004. This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).* Upon review, we find the submitted information constitutes records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that were created or are maintained by a physician and information obtained from a patient's medical records. Accordingly, the submitted information is generally confidential under the MPA.

However, the medical examiner's office has provided an authorization for release of patient information that identifies the requestor as the personal representative of the named individual, and you inquire into whether the medical examiner's office may release the information at issue to this requestor. As noted above, section 159.002(c) of the MPA provides "a person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained." *Id.* § 159.002(c). Accordingly, if the medical examiner's office determines release of the information at issue is consistent with the authorized purposes for which the information was first obtained, then the medical examiner's office may release the submitted information to this requestor pursuant to section 159.002(c) of the MPA. *See Abbott v. Tex. State Bd. of Pharmacy*, 391 S.W.3d 253, 258 (Tex. App.—Austin 2012, no pet.). Conversely, to the extent the medical examiner's office does not determine release of the information at issue is consistent with the authorized purposes for which the information was first obtained, then the medical examiner's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with the MPA.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open

Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Kimbell Kesling
Assistant Attorney General
Open Records Division

KK/jm

Ref: ID# 910945

Enc. Submitted documents

c: Requestor
(w/o enclosures)